IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

J.N., a minor; Florence N., on her own behalf and as mother and next friend of J.N.; D.H., a minor; Carrie H., on her own behalf and as mother and next friend of D.H; Friends of Trumbull, a voluntary unincorporated organization; Plaintiffs;	)	No.
v.	)	Jury Demanded
Barbara Byrd-Bennett, in her official capacity as Chief Executive Officer of the Chicago Board of Education; Chicago Board of Education; Defendants.	)	

COMPLAINT

INTRODUCTORY STATEMENT

1. Plaintiffs J.N. and D.H.[1] (collectively, the "Children") are children with disabilities who attend Lyman Trumbull Elementary School ("Trumbull"), a Chicago Public School. Plaintiff J.N. is 9 years old and has Down Syndrome. Plaintiff D.H. is 11 years old, is developmentally delayed, and suffers from severe anxiety and mood disorders. The Children spend 100% of their school days at Trumbull in self-contained special education classrooms, which must contain no more than 8 or 13 students (depending on whether an aide is present) to accommodate their disabilities.

[1]Pursuant to Federal Rule of Civil Procedure 5.2, the Children's initials are provided in lieu of their full names, as they are minors. *See* Fed. R. Civ. Pro. 5.2(a)(3). In addition, their mothers' and next friends' last names are also indicated only by the initial letter, to avoid revealing the last names of the minors. *See id.*

2. On May 22, 2013, Defendants Barbara Byrd-Bennett and Chicago Board of Education ("CPS") made a final administrative decision to close Trumbull, based primarily on their assessment that Trumbull was "underutilized." Defendants reached that conclusion not by considering Trumbull's actual utilization, but by employing a rigid formula that assessed Trumbull's utilization according to a fictional and discriminatory assumption that the Children could and should be educated in classrooms containing 30 students. This assumption systematically undercounted the utilization of the Children and their special education classmates by failing to account for the Children's disabilities, which require much smaller class sizes. Defendants could reasonably have accommodated the Children's disabilities simply by modifying their blunt formula as applied to Trumbull to account for those smaller class sizes. However, Defendants knowingly refused to consider and accommodate the Children's disabilities in applying the formula and determining to close their school. Had Defendants applied a formula that took into account the limitations on class size required by the Children's disabilities, as a reasonable accommodation, Trumbull would not have been deemed underutilized and therefore would not have been eligible for closure under Defendants' statutory and administrative mandates.

3. Defendants' determination to close Trumbull without reasonably accommodating the Children's disabilities and counting their utilization accordingly directly violated Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. The Children therefore seek to enjoin Defendants from closing Trumbull, as well as any available damages and attorneys' fees under the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq.* ("Section 504"), and the

Americans with Disabilities Act, 42 U.S.C. § 12131, *et seq.* ("ADA").

JURISDICTION

4. This Court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. § 1331 (conferring jurisdiction over civil actions arising under laws of the United States); Section 504 of the Rehabilitation Act, 29 U.S.C. § 794; and the ADA, 42 U.S.C. §§ 12131 *et seq.*

5. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

6. This Court is the appropriate venue under 28 U.S.C. § 1391(b), in that the Defendants are subject to personal jurisdiction in this District, and the events giving rise to this Complaint occurred in this District.

PARTIES

7. Plaintiff J.N. is a 9-year-old child with disabilities in 3rd grade, who has attended Trumbull since October, 2012. He brings this suit by and through his mother and next friend, Florence N. J.N. and Florence N. live in Chicago, Illinois.

8. Plaintiff Florence N. is J.N.'s mother and residential parent. She lives in Chicago, Illinois.

9. Plaintiff D.H. is an 11-year-old child with disabilities in 6th grade, who has attended Trumbull since November, 2012. She brings this suit by and through her mother and next friend, Carrie H. D.H. and Carrie H. live in Chicago, Illinois.

10. Plaintiff Carrie H. is D.H.'s custodial parent. She lives in Chicago, Illinois.

11. Plaintiff Friends of Trumbull is a voluntary unincorporated organization whose purpose is to advocate on behalf of Trumbull's parents and children for

resources to meet the educational needs of Trumbull's children, including children with disabilities. Its Directors, Mark Miller, Alison Burke, and Randy Heite, all live in Chicago, Illinois. Its members include parents of children with disabilities attending Trumbull and works on behalf of such parents. Friends of Trumbull has diverted its resources from raising funds to further Trumbull's educational programs to seeking to halt its closure and opposing Defendants' discriminatory actions, and it would cease to exist were Trumbull to close.

12. Defendant Chicago Board of Education, also known as Chicago Public Schools ("CPS"), is constituted within Illinois for administrative control and direction of public elementary schools in the City of Chicago, which is located in the Northern District of Illinois. CPS constitutes a "local educational agency" within the meaning of Section 504. 29 U.S.C. § 794(b)(2)(B). CPS is also a "public entity" as defined by Title II of the ADA. 42 U.S.C. § 12131(1).

13. Defendant Barbara Byrd-Bennett, chief executive officer and Superintendent of CPS, is sued in her official capacity as CPS Superintendent.

STATEMENT OF THE CASE

A. FACTS AND ADMINISTRATIVE BACKGROUND

1. Trumbull's Educational Programs

14. J.N. receives special education services at Trumbull pursuant to an Individualized Education Plan ("IEP").

15. J.N. spends his school days at Trumbull in a stand-alone classroom of 12 students, with a special education teacher and three paraprofessional aides. State regulation permits a maximum of 8 students in a classroom of this type, or 13 if there is a paraprofessional aide. *See* 23 Ill. Admin. Code § 226.730(b)(3).

16. J.N. is a happy child, who enjoys his school, classmates and teachers.

17. D.H. receives special education services at Trumbull pursuant to an IEP.

18. D.H. suffers from anxiety and mood disorders, and is developmentally delayed. While she has severe emotional disturbances, she has done well at Trumbull, whose teachers know her and know how to deescalate her anger or anxiety during stressful episodes.

19. D.H. is doing well at Trumbull school, and her performance in school has improved since attending Trumbull. She feels comfortable and adjusted to Trumbull. D.H. attends school with her mother's younger sister, which also helps D.H. to feel secure in the school environment.

20. D.H. spends her school days at Trumbull in a stand-alone classroom of 12 students, with a special education teacher and a paraprofessional aide. State regulation permits a maximum of 8 students in a classroom of this type, or 13 if there is a paraprofessional aide. *See* 23 Ill. Admin. Code § 226.730(b)(3).

21. In addition to the principal's office, a clinical staff office (shared by at least 10 clinical professionals) and a library, Trumbull has 31 rooms designed for classroom use. Of these 31 rooms, 10 are used for the following ancillary purposes: a science lab, two computer labs, two music rooms, two special education resource rooms and one special education sensory room, a bilingual education room and a teacher resource room. Of the 21 remaining classrooms, six are "self-contained" special education classrooms.

22. As of the 20th school day of the 2012-2013 school year, according to

Defendants' data, Trumbull had approximately 389 total students enrolled.[2] Of these students, 254 attended general education classes only.[3] Trumbull's remaining 135 students attended special education classes, due to various disabilities. Of these, at least 70 attended self-contained special education classes, like the Children do, in which each of the students spent the entire day receiving special education services.

23. Trumbull's special education classrooms may be further described and classified as follows, with the following approximate class populations:

a. Two half-day "blended pre-kindergarten special ed" classrooms: These classrooms serve children aged three to five who have an IEP providing that they attend classes with non-disabled children. As of the 20th school day of the 2012-13, the first classroom contained 14 morning and 15 afternoon enrolled general education students, and six morning and six afternoon special education students; the second classroom contained 14 morning and 14 afternoon general education students, and six morning and six afternoon special education students, totaling 81 students in all.

b. One half-day "instructional pre-kindergarten special ed" classroom: This classroom serves children aged three to five who have an IEP. A regulation promulgated by the Illinois State Board of Education ("ISBE") requires one teacher per five students, and permits five additional students per aide, in a stand-alone special education classroom serving children of this age. 23 Ill. Admin. Code § 226.730(b)(4). This classroom, which has one teacher and one aide, contained a

[2]Defendants count enrollment as of this day for a variety of administrative purposes. As of May, 2013, Trumbull had approximately 407 students enrolled, 148 of whom participate in its special ed programs.

[3] The 20th day class size numbers contained in this Complaint are approximate.

total of 18 enrolled students as of the 20th school day of the 2012-13 school year, eight attending in the morning, and ten attending in the afternoon.

c. Four "autism/TMH special ed" classrooms: one for Kindergarten to second grade, one for third to fourth graders, one for fifth and sixth graders, and one for seventh and eighth graders. Each of these classrooms serves children with autism and learning disabilities categorized as TMH, which stands for "trainable mentally handicapped." Each classroom is limited to eight students per class, 13 if there is an aide. *See* 23 Ill. Admin. Code § 226.730(b)(3). As of the 20th school day of the 2012-13 school year, a total of 45 students spent the entirety of their school days in these classrooms, an average of 12 each.[4] Each of these classrooms had one teacher and one aide in the 2012-2013 school year, so that their maximum capacity was 13 students.

d. One "cross-categorical special ed" classroom: This classroom serves children from sixth through eighth grade with a range of learning disabilities. This classroom had seven total enrolled students as of the 20th school day of the 2012-13 school year, and is limited by regulation to eight, as it contained one teacher. *See* 23 Ill. Admin. Code § 226.730(b)(3).

24. The lower student-to-teacher ratio in the special education classrooms constitutes a crucial feature of Trumbull's education program, in that it permits teachers to deescalate the anxiety, frustration and conflict that disproportionately affects children with autism and other disabilities. Larger classes are overstimulating, due to increased noise and other distractions, and can cause such

[4]The kindergarten to second grade special education classroom had 12 students, the third and fourth grade special education classroom had 14 students, the fifth and sixth grade special education classroom had 10 students, and the seventh and eighth grade special education classroom had 9 students.

children to experience emotional distress, mounting anxiety, decompensation and panic.

2. Defendants' School Actions

25. Defendants control and direct public elementary schools in the City of Chicago, and are charged by Illinois law with determining where Chicago's children may attend school.

26. The Illinois School Code required Defendants to publish, by January 1, 2012, "space utilization standards" on its website, subject to additional requirements. 105 Ill. Comp. Stat. Ann. 5/34-205 (West 2013).

27. On December 28, 2011, Defendants published its Space Utilization Standards ("Utilization Standards"). These Utilization Standards provided, in relevant part, that

> [e]ach elementary school building is allotted a number of dedicated general education homeroom classrooms, equaling approximately 76% of the total classrooms available. Each elementary school building is also allotted a number of ancillary classrooms equal to approximately 24% of the total classrooms available.

CPS, Space Utilization Standards (December 2011), available at http://www.cps.edu/About_CPS/Policies_and_guidelines/Documents/SpaceUtilizationStandards.pdf (last visited June 17, 2013.) The assumption in this formula, that "of the total classrooms available," 76% are dedicated to "general education" classrooms, and 24% to "ancillary classrooms," is applied regardless of whether a particular school's classroom usage in fact matches that distribution. *See id.*

28. The Utilization Standards further provide as follows:

> Allotted Ancillary Classrooms is defined as the number of classrooms spaces [*sic*] required for non-homeroom uses, such as science labs, computer labs, art rooms, music rooms, resource rooms, special education rooms, governmental agencies and/or community

> organization special programs, after school programs, and other appropriate uses.
>
> Ideal Program Enrollment is defined as allotted homerooms multiplied by 30.
>
> Enrollment Efficiency is defined as an enrollment range defined as Ideal Enrollment less 20% to Ideal Enrollment plus 20%.
>
> . . .
>
> Underutilization is defined as an enrollment range less than Enrollment Efficiency.

CPS, Space Utilization Standards.

29. The Utilization Standards state that the assumption that 76% of classrooms are dedicated to general education uses, and that 24% are dedicated to "ancillary" uses, was based on the "prototype new construction school elementary school," which it stated contains "39 classrooms: 30 dedicated general education homeroom classrooms and 9 ancillary classrooms. The 9 ancillary classrooms are generally programmed—though not required to be used—as 1 science room, 2 music/art rooms, 1 technology lab, 3 specialized education rooms, and 2 specialty classrooms." *Id.*

30. Under the Utilization Standards, utilization is determined by multiplying a school's total classrooms by 76% (representing the assumed percentage of "homerooms") and multiplying the result by 30 (representing the assumed ideal class size of 30 children), to determine "ideal" utilization. This result, plus or minus 20%, is considered "enrollment efficiency." This number is compared to the school's enrollment as of the 20th school day. If that enrollment is less than "enrollment efficiency," meaning less than 80% of "ideal," the school is considered "underutilized." *See id.* The formula assumes that the classrooms are

regular education classrooms and ignores that a class size of 30 children violates the law when those classes are used for special education services for children with disabilities.

31. In 2012, Illinois law provided that for Defendants to effectuate a "school action," meaning, *inter alia*, a school closing, they were required to publish guidelines by November 1. *See* Pub. Act. 97-474; 105 Ill. Comp. Stat. Ann. 5/34-230(a) (West 2011).[5] Such guidelines were to be subject to public comment for at least 21 days prior to approval. *See id.*

32. On November 1, 2012, Defendants published its "Guidelines For School Actions 2012-2013 School Year." A true and accurate copy of the Guidelines is attached hereto as Exhibit A.

33. The Guidelines provide that a "school may be considered for a closure . . . if it is underutilized or overcrowded based on CPS' Space Utilization Standards and student enrollment numbers recorded on the 20th attendance day for the 2012-2013 school year." (Exh. A, Guidelines, § I.A.1.) The Guidelines provided further "constraining factors": that students in closing schools must have the option to enroll in a higher performing school and that the utilization rate after the school action not exceed efficient enrollment. (Exh. B, Guidelines, § I.A.2.) The Guidelines also permitted consideration of

> other information including, but not limited to: safety and security, school culture and climate, school leadership, quality of the school facility, school type and programming, family and community feedback received throughout the school year independent from the process described below, analysis of transition planning costs, neighborhood development plans, whether the school has recently been affected by

[5]This statute was later amended and the current version, effective November 30, 2012, requires guidelines to be proposed by October 1 of each year. 105 Ill. Comp. Stat. Ann. 5/34-230(a) (West 2012).

> any school actions, changes in academic focus or actions taken pursuant to 105 ILCS 5/34-8.3, or proximity, capacity and performance of other schools in the community.

(Exh. B, Guidelines, § I.A.3.)

34. While the prior version of Section 5/34-230(a) required that notice of proposed school actions, pursuant to the guidelines, were to be published by December 1 of the previous school year, Defendants petitioned the Illinois General Assembly in November, 2012, to extend this deadline to March 31, 2013. The General Assembly passed a law, which was signed by Governor Patrick Quinn, extending the deadline for announcing proposed school actions to March 31, 2013. *See* 105 Ill. Comp. Stat. Ann. 5/34-232. This extension applies only to the 2012-2013 school year. *See id.*

35. On February 13, 2013, Defendants published a list of 330 schools, including Trumbull, that had been considered "underutilized" based on the Utilization Standard. On that date, Defendants announced that they had narrowed this list to 129 schools based on additional criteria, including, *inter alia*, that they would not close schools with a utilization rate of more than 70%. A true and accurate copy of the February 13, 2013 announcement of additional criteria is attached hereto as Exhibit B. Trumbull was among the 129 schools on the February 13, 2013 list of schools still slated for closure.

36. On March 21, 2013, in advance of the statutory deadline of March 31, 2013, Defendants announced the closing of 53 elementary schools, including Trumbull.

37. Following this announcement, Defendants were required by statute to hold at least one public hearing at its centrally located office, and convene two

additional hearings or meetings near to the school. *See* 105 Ill. Comp. Stat. Ann. 5/34-230(e). Defendants held public meetings about the closure of Trumbull on April 9 and April 12, 2013, and a public hearing on April 26, 2013. The honorable Judge Gilbert J. Grossi, a retired judge of the Circuit Court of Cook County, presided over Trumbull's public hearing.

38. At the public hearing, CPS representatives testified that Trumbull had 389 students, that its "efficiency range" was between 576 and 864, and that it was therefore underutilized.

39. A CPS representative testified that while Trumbull students would be assigned to three schools, Chappell, McPherson, and McCutcheon, for Trumbull students enrolled in special education cluster programs, "their assigned welcoming school will be either McPherson or McCutcheon." He also testified that for the 2013-2014 school year, "the McCutcheon school will operate a nine-classroom branch facility, which is approximately 150 feet away from the main building."

40. While noting that many witnesses presented arguments that Trumbull was not underutilized when the maximum capacity of special education classrooms was considered, Judge Grossi stated in his findings that he did not "have the power to decide" whether the guidelines violated any laws other than Section 5/34-230 of the Illinois School Code. A true and accurate copy of Judge Grossi's findings is attached hereto as Exhibit C.

41. As Judge Grossi noted, Trumbull's principal had filed an administrative appeal of Defendants' finding that Trumbull was underutilized.

42. In this appeal, Trumbull's principal pointed out that Trumbull's special education programming required smaller class populations, and, if those

requirements were considered, a utilization rate of well over 80% resulted. After the hearing, Defendants responded to this appeal, stating, "[w]e do not adjust our utilization calculation based on student populations and programs." A true and accurate copy of this response is attached hereto as Exhibit D.

43. On May 22, 2013, Defendants voted to close Trumbull, as well as 49 other public elementary schools. No written decision was issued.

44. Defendants calculated Trumbull's utilization rate as follows: 32 total classrooms, reduced by 24% to represent ancillary use, results in 24 "homerooms" which, multiplied by the "ideal" enrollment of 30 students per classroom, equals 720. Adding and subtracting 20% to this figure results in an "efficiency range" of 576 to 874 students. Defendants calculate Trumbull's 20th school day enrollment of 389 to be 54% of ideal, and therefore "underutilized." (*See* Exh. C.)

45. If the Utilization Standard is applied as written, except that the actual student population of each of Trumbull's classrooms is considered against the lawful capacity of those classrooms, Trumbull's utilization is about 70%. This calculation assumes the maximum capacity permissible under state law to deliver educational services in settings appropriate for the children given their disabilities, rather than assuming a school comprising solely general education classrooms with a permissible class size of 30. This non-discriminatory utilization rate falls within the range to avoid closure. (*See* Exh. B.) In the alternative, even if Trumbull's utilization is less than the stated minimum Defendants applied to rule out schools for closure, had Defendants employed a non-discriminatory utilization standard, it would not have elected to close Trumbull.

3. Effects On The Children

46. As a direct and proximate result of Defendants' conduct in failing and refusing to consider the Children's disabilities in applying the Utilization Standard, the Children have each suffered and continue to suffer irreparable harm, including but not limited to being denied their rights not to be discriminated against on the basis of their disabilities in the provision and allotment of public educational services.

47. Defendants acknowledge that closing a school constitutes a reallocation of resources elsewhere, and that for affected families, "this will be hard." Defendants nonetheless place this hard burden, which they justify primarily on budgetary grounds, squarely on the Children without the consideration that is due their disabilities and without accommodation.

48. Further, educational experts have established that when a school closes, it imposes a burden and trauma upon the students of the closing school, and that closing a school is particularly burdensome and traumatic on students with disabilities, like the Children.

49. Negative effects may include educational setbacks averaging 1.5 years.

50. But for the disabilities of the Children, and Defendants' express refusal to take those disabilities into account or to accommodate them, the Children would not be suffering the closing of their school and its attendant negative effects.

51. Defendants have refused to assure the Children that their class sizes will not increase as the result of Defendants' school action.

52. In fact, because Defendants insisted upon counting the Children's

utilization of Trumbull as if their ideal class size contained 30 children, it may be presumed that Defendants will likewise insist upon placing the Children in classes containing that number of children.

53. Carrie H. was recently orally told by a representative of Trumbull that D.H. will be attending Josephine C. Locke Elementary School in the fall, but has received no written notice of where D.H. will be placed.

54. On May 23, 2013, Florence N. received a letter stating J.N. would be attending McCutcheon. She wanted to enroll J.N. at Chappell, reputed to be the best of the three assigned "receiving" schools, and which offers educational programing to students like J.N. with Down Syndrome, but Defendants have refused to permit her to do so.

55. On June 10, 2013, a representative of McCutcheon called Florence N. to tell her she needed to register J.N. by June 18, 2013. She stated that all of the special education students would be in classes in a separate building from McCutcheon. Florence N. believes that J.N. would suffer from being deprived of contact with general education students throughout the day, which he now enjoys and benefits from at Trumbull.

B. Claims for Relief

COUNT I: DISCRIMINATION UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973 (29 U.S.C.A. § 794 *et seq.*)

56. Paragraphs 1-55 above are incorporated as if set forth fully herein.

57. Section 504 of the Rehabilitation Act prohibits discrimination against otherwise qualified individuals on the basis of their disabilities by recipients of federal funding. *See* 29 U.S.C. § 794.

58. Under Section 504, entities receiving federal financial assistance must

make reasonable accommodations in their rules, policies, and practices when necessary to avoid discriminating against a person on the basis of a disability.

59. Defendants receive federal funding causing them to be subject to the requirements of Section 504.

60. Each of the Children is "handicapped" within the meaning of Section 504.

61. Each of the Children is entitled and qualified to participate in the educational programs provided by Defendants.

62. Defendants have discriminated against each of the Children on the basis of his or her handicap, in that they have failed to account for the Children's disabilities when considering the Children's utilization of Trumbull.

63. Defendants have refused to adjust their utilization formula, insisting instead that the Children be treated as if their disabilities did not exist, and as if they could and should occupy classrooms of 30, a size not permitted by their disabilities.

64. Defendants' acts and omissions demonstrated deliberate indifference to the strong likelihood that the strict adherence to the rigid utilization formula would likely result in a violation of the Plaintiffs' federally protected rights.

65. Section 504 required, instead, that Defendants reasonably modify the utilization formula as applied to Trumbull to account for the small class sizes required by the Children's disabilities.

66. Trumbull's principal put the Defendants on notice of the need for a change in the utilization formula. This request for an accommodation was denied by Defendants, who persisted in using its formula to discriminate against the

Children. (*See* Exh. D.)

67. By refusing such a reasonable accommodation, Defendants have excluded the Children from equally participating in, and denied the Children equal benefit of, the educational services and activities Defendants provide, based solely on the Children's disabilities.

68. Further, Section 504 prohibits Defendants from segregating individuals with disabilities, and requires them to ensure that people with disabilities receive services in the most integrated setting appropriate to their needs. By relegating the Children to McCutcheon, Defendants seek to segregate the Children and deprive them of the integrated setting they have enjoyed and benefitted from at Trumbull. This segregation is particularly stark, given Defendants' apparent intention to place children from Trumbull's cluster programs in a school building entirely separate from that of the general education students.

69. Defendants were deliberately indifferent to, and recklessly disregarded, the Children's rights as disabled persons.

70. Defendants' actions were taken in bad faith and with gross misjudgment and deliberate indifference.

71. Defendants' actions and inaction constitute a violation of the Children's rights under Section 504. Defendants' conduct constitutes an ongoing and continuous violation of Section 504, and unless restrained and enjoined from doing so, the Defendants will continue to violate Section 504. The Defendants' acts and omissions, unless enjoined, will continue to inflict irreparable injuries for which Plaintiffs have no adequate remedy at law.

72. Each of the Children's parents, Plaintiffs Florence N. and Carrie H., is

also an aggrieved person within the meaning of the Rehab act.

73. As a result of Defendants' conduct, the Children have suffered and continue to suffer irreparable harm and damages, including but not limited to being subjected to academic setbacks.

74. As a result of Defendants' conduct, Plaintiff Friends of Trumbull has incurred damage, in that it has diverted efforts and resources from its mission of raising funds to further Trumbull's educational programs and has been forced instead to devote its resources to opposing Defendants' discriminatory actions, and advocate against Trumbull's closure. Were Trumbull to close, the organization would incur irreparable harm as it would cease to exist.

COUNT II: THE AMERICANS WITH DISABILITIES ACT (42 U.S.C. § 12131)

75. Paragraphs 1-55 above are incorporated as if set forth fully herein.

76. Title II of the ADA prohibits discrimination against individuals with disabilities and extends the non-discrimination rule of Section 504 of the Rehabilitation Act to services provided by any public entity. *See* 42 U.S.C. § 12132 ("Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.").

77. In enacting the ADA, Congress made specific findings that people with disabilities continually encounter various forms of discrimination, including the failure to make modifications to exclusionary standards and criteria. 42 U.S.C. § 12101(a)(5).

78. Under the ADA, public entities must provide reasonable modifications

when a policy, practice or procedure discriminates on the basis of disability. Public entities must also make reasonable accommodations in their rules, policies, and practices when necessary to avoid discriminating against a person on the basis of a disability.

79. Defendants are public entities subject to the requirements of the ADA.

80. The Children are qualified individuals with a disability within the meaning of the ADA.

81. Defendants have discriminated against the Children by reason of their disabilities, in that, among other things, they (1) showed deliberate indifference to the strong likelihood that adherence to the rigid utilization formula would likely result in a violation of the Plaintiffs' federally protected rights; (2) failed to make a modification to their utilization formula when necessary to avoid discrimination on the basis of disability; (3) refused to grant a reasonable accommodation for the Children's disabilities when considering Trumbull's utilization, despite the principal's demand that the Defendants do so; and (4) segregated the Children and deprived them of the most integrated setting appropriate to their needs.

82. Defendants have refused to adjust their utilization formula, insisting instead that the Children be treated as if their disabilities did not exist, and as if they could and should occupy classrooms of a size not permitted by their disabilities.

83. The ADA required that Defendants reasonably accommodate the Children by adjusting the utilization formula as applied to Trumbull to account for the small class sizes required by the Children's disabilities.

84. By refusing such a reasonable accommodation, Defendants have

excluded the Children from equally participating in, and denied the Children equal benefit of, the educational services and activities Defendants provide, based solely on the Children's disabilities.

85. Further, the ADA prohibits Defendants from segregating individuals with disabilities, and requires them to ensure that people with disabilities receive services in the most integrated setting appropriate to their needs. By relegating the Children to McCutcheon, Defendants seek to segregate the Children and deprive them of the integrated setting they have enjoyed and benefitted from at Trumbull. This segregation is particularly stark, given Defendants' apparent intention to place children from Trumbull's cluster programs in a school building entirely separate from that of the general education students.

86. Defendants were deliberately indifferent to, and recklessly disregarded, the Children's rights as persons with disabilities.

87. Defendants' actions were taken in bad faith and with gross misjudgment and deliberate indifference.

88. Defendants' actions and inaction constitute a violation of the Children's rights under the ADA. Further, Defendants' conduct constitutes an ongoing and continuous violation of the ADA, and unless restrained and enjoined from doing so, the Defendants will continue to violate the ADA. The Defendants' acts and omissions, unless enjoined, will continue to inflict irreparable injuries for which Plaintiffs have no adequate remedy at law.

89. Each of the Children's parents, Plaintiffs Florence N. and Carrie H., is an aggrieved person within the meaning of the ADA.

90. As a result of Defendants' conduct, the Children have suffered and

continue to suffer irreparable harm and damages, including but not limited to being subjected to academic setbacks.

91. As a result of Defendants' conduct, Plaintiff Friends of Trumbull has incurred damage, in that it has diverted efforts and resources from its mission of raising funds to further Trumbull's educational programs and has been forced instead to devote its resources to opposing Defendants' discriminatory actions, and advocate against Trumbull's closure. Were Trumbull to close, the organization would incur irreparable harm as it would cease to exist.

Count III: Pendent State Claim for Declaratory Judgment, for Violation of the Illinois School Code and the Guidelines

92. Paragraphs 1-55 above are incorporated as if set forth fully herein.

93. Defendant CPS, an administrative agency created by statute, has no general or common law powers. Its powers are limited to those granted by the General Assembly and any action it takes must be specifically authorized by statute.

94. Defendants acted outside of their authority in issuing the Guidelines, in basing the Guidelines on the Utilization Standard, in applying the Guidelines, and in reaching the decision to close Trumbull.

A. Violations of State Law in Issuing the Guidelines

95. Defendants acted outside of their authority when issuing the Guidelines.

96. The Illinois School Code required that "[t]he guidelines shall outline the *academic and non-academic criteria* for a school action. These guidelines shall be created with the involvement of local school councils, parents, educators, and community organizations. These guidelines, *and each subsequent revision*, shall be

subject to a public comment period of at least 21 days before their approval." 105 ILCS 5/34-230(a) (emphasis added).

97. The Guidelines outlined no specific academic and non-academic criteria for a school closure. (*See* Exh. A.) However, Defendants issued additional academic criteria for school closures on February 13, 2013, stating, for example, that it would not close schools it rated "Level 1" (Defendant's highest rating, on a scale of 1-3), but this revision of the Guidelines was never subject to public comment. Defendants therefore acted outside of their statutory authority.

B. Violations of State Law Inherent in the Utilization Standard

98. Further, the Illinois School Code required Defendants to publish, by January 1, 2012, "space utilization standards" on its website, subject to additional requirements. 105 Ill. Comp. Stat. Ann. 5/34-205.

99. The Utilization Standard was required by law to "consider[] . . . the requirements of elementary and secondary programs, shared campuses, after school programming, the facility needs, grade and age ranges of the attending students, and use of school buildings by governmental agencies and community organizations." 105 Ill. Comp. Stat. Ann. 5/34-205.

100. However, the Utilization Standard failed to afford any consideration whatsoever to the requirements of Trumbull's programs, particularly the educational program designed for children with disabilities, like the Children, and therefore fails to meet a clear, mandatory statutory requirement.

101. Defendants admitted that it applied the Utilization Standard without regard to Trumbull's "student populations and programs." (See Exhibit D.)

102. Defendants therefore acted outside of their statutory authority in

adopting the utilization standard and incorporating that unlawful standard into the Guidelines.

C. Violations of State Law in Applying the Guidelines

103. The Guidelines required, *inter alia*, that Defendants issue draft transition plans with notice of each proposed school action, which was "dependent on the unique circumstances" of the proposed action, and was required to include, among other things, provisions of "supports for students with disabilities," and "informational briefings regarding the choice of schools that include all pertinent information to enable the parent or guardian and child to make an informed choice, including the option to visit the schools of choice prior to making a decision." (Exh. B, § II at 2-3.)

104. Defendants' draft transition plan for Trumbull did not reflect the unique circumstances of Trumbull's closing. It is virtually identical to the draft transition plans issued for each of the other 49 schools Defendants determined to close. A true and accurate copy of the draft transition plan is attached hereto as Exhibit E.

105. Defendants' draft transition plan for Trumbull failed to provide any specific supports for the Children's disabilities. The only provision relating to such "supports" asserts that the Children's IEPs will be reviewed and followed, which federal law already requires. (*See* Exh. D.) Trumbull's cluster programs are only mentioned in the context of limiting the receiving schools of the students in those programs. (*See* Exh. D.)

106. Far from providing all pertinent information regarding "the choice of schools" sufficient to enable the Children's parents to make an informed decision, the transition plan did not even advise the Children's parents what schools the

Children could opt to attend, instead stating only that the students attending Trumbull's "cluster" programs would be attending McCutcheon or McPherson, and that parents should call Office of Special Education and Support (773) 553-1800 to discuss their child's placement.

107. The draft transition plan thus failed to meet several requirements of the Guidelines.

D. Violations of State Law in Approving the Proposed School Closure.

108. The Illinois School Code expressly prohibits Defendants from approving a proposed school action where Defendants have failed to follow the law or the guidelines. *See* 105 Ill. Comp. Stat. Ann. 5/34-230(h) ("If the chief executive officer proposes a school action without following the mandates set forth in this Section, the proposed school action shall not be approved by the Board during the school year in which the school action was proposed.").

109. This is a mandatory requirement, and the Children are therefore entitled to a declaratory judgment and order enjoining Trumbull's closure.

110. In the alternative, Defendants' failure to follow the law and their own Guidelines in approving Trumbull's closure constitutes arbitrary and capricious agency action as a matter of law, exceeding the authority vested in Defendants by law, and the Children are therefore entitled to an order declaring Defendants' action in approving Trumbull's closure void as exceeding Defendants' authority, and enjoining that closure.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray that this Court:

(a) Enter a preliminary and permanent injunction against the Defendants,

ordering them to reverse their decision to close Lyman Trumbull Elementary School;

(b) Enter an award of compensatory damages to each of the Plaintiffs;

(c) Declare that Defendants' acts and omissions violate Plaintiffs' rights under the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973;

(d) Declare that Defendants' decision to close Lyman Trumbull Elementary School violated Illinois law and was arbitrary and capricious;

(e) Award Plaintiffs reasonable costs and attorneys' fees.

(f) Grant such other relief as this Court deems just and proper.

DEMAND FOR A JURY TRIAL

Plaintiffs demand a jury trial on all issues properly triable to a jury.

Dated: June 19, 2013

Respectfully submitted,

s/Miriam Hallbauer

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